

REMARKS

Claims 1-10, 12 and 13 are amended. Support for the amended claims may be found generally throughout the specification as well as in the original claims. Claims 14 and 15 are new. These claims are directed to similar subject matter of claim 11. Claim 11 is cancelled. Claims 1-10 and 12-15 remain pending in the application.

Responsive to the preliminary determination of lack of unity set forth in the outstanding Official Action, applicants hereby provisionally elect Group I, drawn to a depsipeptide product FKI-1033 (claims 1, 7-10 and 13-15), with traverse.

The lack of unity determination set forth in the outstanding Official Action is believed to be improper and should be withdrawn.

In applying the same legal standard with similar claims, the International Searching Authority did not determine the unity of invention as lacking. Thus, the Patent Office has the benefit of the search report, but fails to explain why the opposite conclusion was reached.

Further, amended claims 1, 2, 6-10 and 12-15 are directed to an isolated compound FKI-1033, the method of isolating the compound, compounds comprising the isolated compound, and a method of producing other items with the isolated compound. Accordingly, claims 1, 2, 6-10 and 12-15 do share the same technical feature: an isolated FKI-1033 compound.

Further, the Patent Office has not met its burden as described under PCT Rules 13.1 and 13.2 in indicating where the recited isolated FKI-1033 compound is cited publication. At best, the publication is unclear as to whether it discloses or suggests such a compound or even compounds having insecticidal activity, anthelmintic activity, and activity of ryanodine binding inhibition to a ryanodine receptor. It is also not clear from the publications as to whether the compounds suggested by the publications are even isolated as recited.

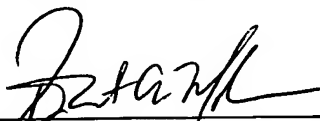
Further, claims 3-5 are directed to a fungus that is utilized in the process for isolating the FKI-1033 compound. Thus, claims 3-5 also share the same special technical feature with claims 1, 2, 7-10 and 12-15: an isolated FKI-1033 compound.

In view of the above, it is believed that the applicants are entitled to an action on the merits of all pending claims, in their full scope, in the present application. Such an action is accordingly respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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